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## A HUMAN RIGHTS AGENDA FOR SOCIAL CHANGE

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**Salma Yusuf<sup>[a],\*</sup>; Jennifer Woodham<sup>[b]</sup>**

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<sup>[a]</sup>Independent Human Rights Professional, Lecturer in Law and Advisor to national and international programmes in policy development, advocacy and research in the fields of human rights, international justice, reconciliation and social justice, Sri Lanka.

<sup>[b]</sup>Human Rights Lawyer and Researcher, United Kingdom. LL.M., Queen Mary, University of London; LL.B., University of Essex.

\*Corresponding author.

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### Abstract

International discourse on human rights law has seldom explored the potential and promise of the international human rights regime to function as a tool to contribute to social justice, social stability and social change. The paper rests on the central thesis that human rights must always be considered as a means to an end and not an end in itself if it is to serve a meaningful purpose. Such a perspective ensures that human rights bring with it social resolve apart from being a mere anthropocentric phenomenon focusing on the individual in a vacuum. It advocates that human dignity be the ultimate goal in the promotion and protection of human rights in a manner that regards the individual as a unit of the society to which he or she belongs.

The paper begins by examining the role that human rights can play in securing a sustainable and durable peace particularly for nations emerging from the throes of conflict and fragility. It draws on the first and second generation human rights to construct a central thesis that is illustrated by specific examples of how a project for human rights protection and promotion can lead to social change through peace-building.

The second part of the paper delves into a third generation human right, namely the human right to development to discuss how the human right is currently being realized in different parts of the world with unfair consequences for the developed and developing world. It utilizes international development mechanisms to evaluate the extent to which the human right to development is being realized from which emerges the analysis that a significant gulf currently exists between the rhetoric and reality in the global realization of the right. This paper examines the reasons for the gap between rhetoric and reality and then moves on to determine

strategies to reduce or indeed bridge this gap, which would in turn contribute to the realization of a full protection to the human right to development. Through the discussion it comes to light that the human right to development, if implemented as intended, can contribute in no limited measure towards achieving social change and stability at the global level.

**Key words:** Human rights; Social justice; Peace-building; Social and cultural rights; Civil and political rights

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## 1. HUMAN RIGHTS AND PEACE-BUILDING

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The aim of the first part of the paper is to examine the contribution that human rights can make in terms of securing lasting peace in post-conflict societies. In particular, it aims to assess how human rights can deter civil unrest through the creation of a wide range of socio-economic opportunities, as well as a sense of belonging to the nation itself. This is achieved through an assessment of the elements needed to build a nation, and the ways in which specific human rights can contribute to a process of nation-building.

In the absence of such a sense of belonging, it is inevitable that civil unrest will return. Whilst the introduction of human rights can cause controversy, the paper demonstrates that such does not always have to be the case: human rights can indeed be introduced in a culturally-specific manner, thereby averting the common concern that human rights are simply a means of the West imposing its visions on the rest of the world.

### 1.1 Human Rights in Peace-Building: The Issues

The subject of human rights, particularly in fragile contexts where international interest is in no small measure, to rebuild a nation can be controversial. However, when the benefits that such rights can bring to society are considered without prior prejudice, it becomes apparent that their introduction into post-conflict nations can help to secure lasting peace. If human rights are able to help citizens and other peoples within the nation to feel safe and secure in their environment, then civil unrest is much less likely to occur. For this reason, human rights are now considered to be an important part of the nation-building process.

Taking on board the growing importance placed on introducing human rights to post-conflict nations, this paper aims to assess exactly *how* human rights can be used to create security in post-conflict societies. In particular, it considers how human rights can be used both to create a sense of belonging to the nation, and to create socio-economic opportunities for the people living within the nation. It is intended to inform the work of practitioners in the fields of human rights, development and peace-building to consider more broadly the issues of human rights and their role in rebuilding nations and secure lasting peace.

Prior to the introduction of human rights into a post-conflict nation, it is crucial to understand precisely what is necessary to (re)build a nation in the first place.

This is a difficult issue to address, not least because of the widely held view that it is not possible to simply "build" a nation, particularly when those purporting to be doing the "building" are representatives from external states (Brahimi, 2007), who perhaps do not understand local cultures, traditions and values. The argument made is that nations evolve over the years, and therefore cannot be artificially created. If this is accepted, then it is clear human rights cannot be introduced into post-conflict societies without consideration being given to how such rights will fit into the societies in question. Instead, it becomes necessary to involve all sections of the local community in the "nation-building" process and the determination of how human rights will be implemented by the respective state itself.

Such an approach is considered by scholars such as Béatrice Pouligny. Pouligny (2005) explores the difficulties surrounding the rebuilding of a nation—including the tendency of foreign agencies to ignore the local populace in the nation-building process. Taking a moment to look at the arguments advanced by Pouligny will help to indicate what more practitioners can do to help secure lasting peace in post-conflict societies. It can prove useful in determining best practices associated with the introduction of a human rights framework into post-conflict societies.

## **1.2 The Notion of "Civil Society"**

### **1.2.1 The Perceived "Western Bias"**

One of the first—and most important—criticisms that Pouligny (2005) makes is that, often, those taking the lead in rebuilding post-conflict societies look to base the newly rebuilt societies on Western models of what "civil society" should be. This, she argues, often leads to the exclusion of traditional methods of organizing the state—largely because these methods are "too different" from the Western ideal. It is important that this concern is addressed: it seems clear that if local cultures and traditions are ignored as a "new" nation is (re)built, then local people are less likely to feel connected with this nation—and it follows that a likelihood of recurrence of violence and unrest is higher in such contexts.

Practitioners working in this field both nationally and internationally should therefore take steps to ensure that the local population has a significant role to play in the nation building process.<sup>1</sup> This includes the local people being consulted in decisions on how proposed human rights mechanisms are implemented, and what they should entail. Pouligny (2005, p.498) is able to list a number of situations in which local people have successfully played a part in the rebuilding of their nations—ranging from informal peace agreements in Papua New Guinea and the Sierra Leone, to weapon-free zones in South Africa and the Solomon Islands. This highlights that traditional methods of nation-building can work and should at least be considered.

### **1.2.2 The Political Nature of "Civil Society"**

Pouligny (2005, p.500) argues that the idea of a "civil society" is not dealt with realistically. She explains that many members of civil society can—and do—act

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<sup>1</sup> This is an issue also picked up on by Brahimi (2007, p.3), who argues that: 'It should be obvious to all concerned- but alas, it is not - that the sole agenda around which everyone should unite in a post-conflict situation can only be the one that serves the interest of the people we pretend to be there to help and them alone.'

politically, and may have their own hidden agendas that may be discredited.

This is not something that is always taken account of, but it is something that needs to be addressed. It is not sufficient to consider input as legitimate only on the basis that that person was not directly connected to the previous government. Practitioners also need to consider peoples' indirect connections, for instance, through religious or community groups, in order to determine whether they are free from political influence.

This is relevant in terms of obtaining local input with regard to the introduction of human rights into post-conflict societies: a person may, for example, support the introduction of certain rights above others, on the basis that these rights are likely to benefit a certain group. Whilst it is understandable and expected that members of civil society will want to promote their own interests, it is important that, when these interests are not easily visible, they are not forgotten completely. Determining where such interests exist will not be an easy task; however it is critical to securing and maintaining a lasting peace.

### **1.3 Supporting Civil Society for Peace-Building**

The next issue that needs to be addressed is the support given to civil society in a peace-building context. The main criticisms, as identified by Pouligny (2005, pp.501-502), are that: (a) there is often a failure to input local knowledge into rebuilt societies; (b) local processes often fail to be enforced within rebuilt societies; and (c) local people remain uncertain and skeptical about outside intervention. Practitioners working in this field should therefore ensure that these issues are acknowledged and addressed.

As an example, practitioners should work to ensure that local resources are taken account of when rebuilding post-conflict nations. This is because such resources are identifiable to the survivors of post-conflict societies, who may want to rebuild a recognizable home environment, rather than start from scratch in a newly rebuilt environment that is alien to them (Pouligny, 2005, pp.502). Every effort should therefore be made to ensure that human rights are introduced into post-conflict societies with cultural sensitivity. If this is done, it is much more likely that the local populace will be accepting of the new human rights mechanisms, enabling them to be implemented fully and successfully in society.

Pouligny is not alone in her identification of this issue. Writers such as Brahimi have also warned that those intervening from outside the post-conflict state must recognize that, whilst their assistance within that state may well be "vital", they are only "temporary" visitors—the national will should take priority over the arbitrary imposition of foreign values (Brahimi, 2007, p.3). Such warnings should not be ignored, and the importance of giving local people a role to play in the rebuilding of the state should be duly noted.

### **1.4 Accountability: A Two-Way Street**

Pouligny (2005, p.504) also argues that it is important that any outsiders involved in peace-building are willing to be held to account for their actions, in the same way that they expect local people to be held to account for theirs. This issue is rarely considered at present—but it is an issue that needs addressing if human rights are to be successfully introduced into post-conflict societies.

It is clear that, if intervening states expect post-conflict states to hold themselves

to account when they fail to protect human rights, they should also expect to be held to account when their own actions neglect the human rights of the local people. This has rarely happened in the past, making the credibility of intervening states an important issue. It is argued by commentators such as David Law, that such states can often be seen to have ulterior motives and that any history of an intervening state in the region it is purporting to help rebuild will have an impact on how credible the local population consider that state to be. As an example, Law suggests that if the United States or France were to intervene in the Caribbean in future, the local population would be likely to link this to “their unimpressive efforts in Haiti” (Law, 2006, p.7).

Therefore, it follows that intervening states need to be much more transparent about their motives for intervening—and much more willing to take responsibility for their own actions—if they want the local populace to accept their own actions as legitimate and worthwhile. If the local population is suspicious of intervening states, then they will be less willing to engage with new structures, and this may lead to further unrest and new conflicts.

## **1.5 Political Challenges in Rebuilding Post-Conflict Societies**

### **1.5.1 Cultural-Sensitivity**

It has been argued that whilst an intervening state may help to rebuild socio-political infrastructures and institutions, these will remain “empty boxes” unless that state also considers the “conceptual roots of social and political life” in the nation is helping to rebuild (Pouligny, 2005, p.505). To successfully “rebuild” a nation and create lasting peace, more needs to be done to ensure that there is an understanding of the cultures and traditions of the nation—and more effort needs to be taken to include such perspectives in the new society. This will give the new infrastructures, including human rights infrastructures, the best chance of remaining in place.

### **1.5.2 Stability Versus Long-Term Change**

A useful proposal is that, rather than looking for stability whilst rebuilding a nation, what should actually be considered is long-term change (Pouligny, 2005, p.506). Such change, it is argued, should aim to address the issues that led to the conflict, and ultimately to overcome them. It has been contended that, at present, the international community tends to focus on “stabilizing” post-conflict societies in the short to mid-term—rather than seeking a fuller and more long-term solution to the conflict (Pouligny, 2005). Although long term resolutions are of course more difficult to achieve, practitioners should aim to find such solutions, even if this means taking a longer, more challenging path. The introduction of human rights into post-conflict societies could be one such long-term solution, but considerable efforts would need to be made both to promote such rights within the local communities, and then to adapt the way they are implemented so as to compliment the society’s existing culture and traditions.

## **1.6 The Benefits of Human Rights to Post-Conflict Nations**

We have seen that, in order to rebuild a post-conflict nation, it is imperative to ensure that the local populace is able to connect with the newly rebuilt nation. It follows that, if human rights are to be introduced into post-conflict nations, their

introduction must also occur in the same manner: namely, through an approach that is sensitive to local culture and traditions. Such rights must benefit the newly rebuilt state—as well as its nationals—in order to be fully integrated into society. The benefits of introducing human rights to post-conflict nations are considered below. Further, best practices associated with such introduction are addressed for their contribution to rebuilding a nation and securing lasting peace.

### **1.6.1 The Benefits of Protecting and Promoting Civil and Political Rights—Creating A Sense of Belonging**

Although civil and political rights are traditionally considered to be “first generation rights”, it is now generally accepted that all human rights are indivisible and interdependent.<sup>2</sup> However, as the civil and political rights on the one hand, and economic, social and cultural rights on the other, offer different benefits to the state and its people, it is legitimate to consider them separately.

One of the key advantages that civil and political rights offer is that they enable citizens to feel involved with the state—and that their state, in some way, belongs to them. This is important in terms of nation-building and securing lasting peace, because if citizens have no connection to the state, then they also have no motivation to avoid conflict. Assessing the advantages that specific civil and political rights offer will therefore demonstrate how they can help to rebuild nations and secure lasting peace.

It is argued that although civil and political rights should not take priority over economic and cultural rights, they are necessary to secure these rights. This highlights the indivisibility of the two sets of rights, even though they are used to provide distinct protections within society.

#### **1.6.1.1 The Right to Liberty and Security of Person**

This right, combined with the right to life and freedom from torture, is important for ensuring that people do not have to fear for their safety whilst going about their daily lives. It is a right included in the Universal Declaration of Human Rights,<sup>3</sup> as well as in the International Covenant on Civil and Political Rights, hence it is widely recognized and applied.<sup>4</sup>

In terms of what this right can bring to a newly rebuilt nation, it can help to maintain peace and security because, if citizens are able to feel safe and secure in their environment, conflict is less likely to arise. It is particularly important that this right is successfully introduced into post-conflict societies where persecution has previously been an issue. This is because there is likely to be suspicion among citizens and other peoples that the rebuilding of the nation will result in the reinstatement of persecution: these suspicions need to be disproved.

Additionally, ensuring that the security of person is protected can improve international relations: if the international community can see that rights such as these are being effectively protected, they are likely to be much more willing to engage with the newly rebuilt state. In a globalized world, the ability to engage with other states is essential both politically and economically.

#### **1.6.1.2 The Right to a Fair Trial and Equality Before the Law**

It is important to ensure that all people are treated fairly in legal proceedings within

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<sup>2</sup> For an example of this see Howard (1983).

<sup>3</sup> Universal Declaration of Human Rights, Article 3.

<sup>4</sup> International Covenant on Civil and Political Rights, Article 9.



newly rebuilt societies, largely because faith needs to be restored in the ability of the legal system to provide justice. As with the right to liberty and security of person, the implementation of the right to a fair trial and equality before the law is particularly important in post-conflict societies where persecution has been an issue. This is because it is necessary for those who have been persecuted to see that the state is now able to protect them: if they are unable to see this, then they are unlikely to be able to feel that they truly belong within the state.

The protection of these rights is also important to the state more generally – a functioning and respected legal system is crucial in securing law and order, being essential if future civil unrest is to be avoided. It follows from this that protecting the right to a fair trial and equality before the law can be a vital ingredient for securing lasting peace.

#### **1.6.1.3 Electoral Rights and the Public Participation of Minorities**

It is impossible to discuss the role of civil and political rights in creating a sense of belonging to a nation without discussing electoral rights. The right to vote and to stand for election represents a direct method of participating in the rebuilding of the nation, and is a right that is essential if lasting peace is to be secured in post-conflict societies. Being able to vote is particularly important for creating a sense of belonging between citizens and state. According to the United Nations Office of the Special Advisor on Gender Issues and Advancement of Women democratic elections are an essential element of peace-building in post-conflict nations. This is because it is only where political institutions are representative of all groups within society that peace and stability is likely to last.<sup>5</sup>

It follows that the creation of a fully representative electoral system is essential to securing lasting peace. Such a system must protect not only the majority of the post-conflict nation's citizens, but also all the minority and other disadvantaged groups within that society. If this cannot be achieved, then it is unlikely that peace will be maintained. This is an issue that has been written on extensively by Yash Ghai, who argues that to develop a truly democratic society, minorities must be given "a voice of their own" and the ability to address their concerns (Ghai, 2003). He argues that introducing "special measures" for minorities does not place them in a position of privilege in society, but rather puts them on an equal footing with the majority (Ghai, 2003). This allows minority groups to be able to influence public policy and therefore helps to prevent them feeling detached from their nation. Indeed, as Ghai concludes that enabling minorities to participate in public affairs give them their "sense of identity" – without this it is impossible for such minorities to truly feel that they are fully connected to the state and community (Ghai, 2003). It is clear then that when minority rights are secured, there is a much greater likelihood that peace will be maintained. Practitioners should therefore aim to ensure that minority voices can be heard and addressed when rebuilding post-conflict societies.

It should be remembered that a "one size fits all" solution does not exist when it comes to setting up electoral systems in post-conflict societies. Although it can be argued that, in general, a first-past-the-post system may be "the least favourable for

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<sup>5</sup> Women and Elections, Guide to Promoting the Participation of Women in Elections, Chapter 1, *Office of the Special Advisor on Gender, Issues and Advancement of Women*: <http://www.un.org/womenwatch/osagi/wps/publication/Chapter1.htm>

the election of minority representation” (Ghai, 2003, p.5), as previously discussed, it is important to allow local people to have a say in how their nation is rebuilt. It follows that rather than simply introducing a system of proportional representation with no real consideration as to whether this is suitable, the views of the local community should be sought out: it may be that some societies feel their rights could be best protected by an alternative vote or first-past-the-post system.

What must be remembered is that the system ought to be suited to local needs, and that it is able to represent the interests of the entire community. According to Ghai, the chosen system is likely to depend more on the “circumstances and constraints” of a specific situation than on the merits of the various systems available. As an example, he states that where special rules for legislative representation may be required for a small minority, a more substantial minority may not need such rules—and additionally such rules may be viewed by the majority with suspicion or resentment (Ghai, 2003). Every case will be different, and the requirements and needs of minority groups in post conflict societies should not therefore be generalized by practitioners.

#### **1.6.1.4 Final Thoughts**

All civil and political rights should be protected in as full a manner as possible. Protecting the rights of all people in this way makes it less likely that conflict will redevelop, allowing post-conflict nations to move forward, rather than continually looking backwards and expecting new or further unrest. It also helps to give the state an improved status within the international community, leading to improved trade and other benefits.

### **1.6.2 The Benefits of Protecting and Promoting Economic, Social and Cultural Rights – Creating Opportunities**

Economic, social and cultural rights herald an opportunity to post-conflict nations. The aim of these rights is to ensure that all people are able to meet their basic human needs. Although traditionally viewed as being more expensive than their civil and political counterparts, this is not necessarily the case. It is pointed out by writers such as Eide (2001) that the argument that socio-economic rights require a greater use of state resources than civil and political rights only applies where we focus on the obligation to fulfill socio-economic rights and the obligation to *respect* civil and political rights. This, he explains, is a misguided comparison—some civil rights require significant state resources to be fulfilled, whilst some socio-economic rights can be adequately safeguarded by allowing individuals to use freely the resources available to them (Eide, 2001).

It follows that the introduction of socio-economic rights in post-conflict societies should not be ruled out on the basis of monetary concerns. Instead, it has been seen that the fulfillment of economic, social and cultural rights in fact has the potential to improve the nation’s economy as a whole. The benefits offered by a number of specific economic, social and cultural rights are considered below.

#### **1.6.2.1 The Right to Health**

The physical and mental wellbeing of the nation can be particularly important for maintaining peace and security in post-conflict societies. A human rights framework that provides comprehensive protection for the human right to health is fundamental for achieving this. Although providing such protection is a difficult



political issue even in the world's wealthiest of nations,<sup>6</sup> the provision of real access to healthcare in post-conflict nations will help to prevent the return of civil unrest. Such access should include emergency and routine medical treatment, as well as immunization programmes. This will help to maintain lasting peace because, if a society – or a less affluent proportion of that society – is suffering from ill-health and disease, that society is much more likely to be rife with discontent. Additionally, creating a healthy nation is likely to benefit the state's economy – a sick nation is unable to work, and is therefore unable to generate wealth.

Concerns about the cost of providing human rights protection for the right to health in post-conflict societies should not be overstated. The right to health is a progressive human right, meaning that citizens should expect their state to provide them with protection for "the highest attainable standard of physical and mental health".<sup>7</sup> This standard depends on the wealth of the nation, so the standard that one could expect to enjoy in Germany, for example, is not the same as the standard one could expect to enjoy in Guatemala. Despite this, it is still argued that providing protection for the right to health is essential for alleviating poverty and encouraging development.

According to the World Health Organisation (2002), having a human rights perspective "transforms the development discourse", as health becomes a right that all people are entitled to, rather than an issue that may be resolved, for example, through charity. This is illustrative of how the protection of the right to health creates opportunities – an essential component for securing lasting peace. The World Health Organization (2002) also explains that equality and non-discrimination are important principles to be applied in all societies; hence, what becomes important is that access to healthcare is provided to all people equally.

Whilst people within a post-conflict nation are unlikely to have unrealistic expectations regarding the level of healthcare that the nation can afford to provide, at the same time they should be able to expect that such healthcare will be available to them without discrimination. If this is not achieved, civil unrest is likely to return. Practitioners should therefore work to encourage the development of healthcare infrastructures that can be easily accessed by even the most marginalized groups in society.

#### **1.6.2.2 The Right to Education**

The right to education is vital to improving the wealth of the nation as a whole. Education provides those within a state with opportunities to develop new skills. This, in turn, provides them with the opportunity to generate a higher income. As citizens are able to earn more, it is clear that the nation's economy will improve as a whole and the likelihood of satisfaction and prevention of frustration can considerably contribute to building a connection with the newly rebuilt state. This is happening at the moment, where India is moving ahead of the Western world in relation to science and technology.

In terms of what this means for post-conflict societies, it is clear that a world-class system of universities cannot be developed overnight. However, if investment is made in the education system, then the state's economic outlook can improve

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<sup>6</sup> Sridhar (2005).

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights, Article 12

in the long-term. Moreover, such investment will prevent unrest in the short to medium-term because if citizens can see progress being made and they are given the opportunity to improve their own standard and quality of life, they are far less likely to agitate and return to conflict.

### **1.6.2.3 The Right to Work**

As with the other economic, social and cultural rights considered, it is evident that protection of the right to work carries with it the potential to improve the prosperity of the nation. This is because it is important to have an active workforce in order to grow the nation's economy: if people are given the ability to work, then they are able to go out and earn more money, some of which can then be created as revenue. Post-conflict nations should therefore aim to provide protection for this right, in order to provide their citizens with the best chance of improving their economic situations. Such protection will in turn reduce unrest and improve the economy.

### **1.6.2.4. Final Thoughts**

The protection of socio-economic rights clearly has the potential to greatly improve a nation's wealth – and it is evident that conflict is more likely to occur in a nation of poverty as opposed to a nation of prosperity. Whilst there may be some concerns about the cost of implementing economic, social and cultural rights, some of the strongest socio-economic rights protection exists in Africa (i.e. not in the developed, Western world). There is therefore scope to introduce protection for economic, social and cultural rights, even in post-conflict societies having limited monetary resources. Such protection must always be provided without discrimination.

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## **2. A HUMAN RIGHT TO DEVELOPMENT: MOVING BEYOND THE RHETORIC**

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It is argued – and generally accepted – that although there has been observed a general willingness to express rhetorical support for a human right to development (RTD), there has been observed a related tendency to “neglect its basic precepts in development practice” (Marks, 2004, p.137). Consequently, there exists a significant gulf between the “rhetoric” and the “reality” of development practice. This second part of this paper examines the reasons for the gap between rhetoric and reality and then moves on to determine strategies to reduce or indeed bridge this gap, which would in turn contribute to the realization of a full protection to the human right to development.

In the second part of this paper, the current mechanisms for implementing RTD are assessed, and an analysis of the possible approaches to overcome their difficulties is discussed. The conclusion reached is that, in order to move development beyond rhetoric, the current systems need to be given greater authority, and wider mandates. Further, it is observed that the current internationally agreed definition of the right to development needs to be expanded upon, with increased specificity and consensus reached on what the right should entail.

A caveat is in order. It should be borne in mind that ways of advancing the human right to development considered in this paper are not exhaustive. However, it is hoped that the issues addressed will inform the work of practitioners

in the development field so that there can be generated a greater momentum towards a full and meaningful human right to development, both nationally and internationally.

## 2.1 A Human Right to Development – The Challenges

Attitudes towards the introduction of a human right to development are unusual in that there is a general willingness to support such a right in theory, yet there is less enthusiasm about adopting such a right in practice. This does not mean that states ignore the right to development completely in their policies, but rather that they acknowledge that such a right exists, but tend to attach greater focus on the obligations that it places on other states.

There has been observed a reluctance of states to put themselves in a position where they could be held to account for failing to adequately protect the right to development: for developed states this may be because of apprehensions that subscribing to such legally binding obligations will limit their sovereign powers; for developing states the issue may be one of concern of costs associated with implementing the human right to development nationally. This has led to the current situation of a significant gulf between the rhetoric and practice accorded to the right to development.

Development practitioners such as Laure-Hélène Piron have picked up on these issues, arguing that whilst Northern states tend to recognize RTD as a right of individuals, which should be realized by the state (Laure-Hélène, 2002, p.18), the Non-Aligned Movement countries tend to consider RTD to be a right of states and a collective people's right – which should be realized through international cooperation (Laure-Hélène, 2002, pp.18-19). Although there exists some international cooperation at this level – most notably through the United Nations Development Programme – and developed nations have also taken measures to help to implement the right to development, these differences in opinion have created tensions between the two groups of states.<sup>8</sup> Further, the differences in opinion have created a dilemma for practitioners who wish to move the human right to development beyond rhetoric and into reality: how to generate *consensus* between states, and encourage them to engage fully with a human right to development. This paper aims to go some way towards addressing this dilemma through an in-depth analysis of the right to development through which solutions are seen to emerge, which in turn will be able to inform the work of development practitioners to move RTD beyond its current barriers.

## 2.2 Exploring the Human Right to Development

The human right to development is most clearly defined in the 1986 United Nations Declaration, which states that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and

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<sup>8</sup> Marks (2004), where it is argued that 'The United States, joined by several other Western Countries, has been frustrated by what it perceives as the determination of countries in the Non-Aligned Movement (NAM) to force their interpretation of this right on what is essentially a group of donor states'

fundamental freedoms can be fully realized.

This definition is expanded upon by scholars such as Sengupta (2001), who identifies four key components of the human right to development:

- 1). That the right to development 'is a human right';
- 2). That development should be a process in which 'all human rights and fundamental freedoms can be fully realized';
- 3). That 'free, effective and full participation of all individuals' is essential to the development process; and
- 4). That the human right to development places obligations on all duty holders – individuals, nation states and the international community.

Following on from this definition, it is clear that the right to development is intended to be a wide and far-reaching right that is essential to the realization of other human rights—including those contained within the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. This interpretation fits squarely with the views of international scholar Sen (1999), who views development as "a process of expanding the real freedoms that people enjoy". Such freedoms clearly include other human rights. Sen (1999) argues that by focusing on development as a means of increasing freedom, the implementation of a right to development will not focus too heavily on individual components of development, such as increasing individual incomes or the Gross Domestic Product. This approach could therefore be useful towards the full realization of the right to development.

Moreover, Sengupta's definition makes it clear that a duty to protect RTD is placed on all parties concerned, ranging from individuals to the international community. Therefore, in order to bring the right to development fully into reality, it will be necessary to identify the responsibilities of all actors—and to introduce legal mechanisms to ensure successful enforcement and realization of the right.

### **2.3 Development in Practice – the Rhetoric and the Reality**

Despite the all-encompassing definition of RTD discussed above, the reality is that the human right to development is a highly controversial and contested concept. This is seen in the work of a number of authors,<sup>9</sup> as well as in the ways RTD is protected in practice. An assessment of the way RTD is *presented* against the way it is practically applied demonstrates how significant the discrepancies are between RTD-rhetoric and RTD-reality. This would be the first step to determine *why* this is in fact the case, and *how* development practitioners could move beyond these challenges.

#### **2.3.1 The Millenium Development Goals**

The implementation of the United Nations' Millennium Development Goals (MDGs) is illustrative of how RTD-rhetoric can be contrasted against RTD-reality. The introduction of these goals can be seen as promoting the right to development, particularly as they recognize that moving people out of poverty requires much more than just money. Targets based on health, education, gender equality and

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<sup>9</sup> Marks (2004), where it is argued that whilst RTD has been included in international debate for 30 years, it has yet to be practically implemented; or Sitta (2001), where it is argued that whilst certain aspects of RTD can be agreed upon, there are many different interpretations of how development and human rights relate.

environmental sustainability are included within the MDGs, demonstrating a wide-ranging idea of “development”. However, there is an argument to be made that by separating out specific goals from the concept of development more generally, RTD as a whole is weakened. In particular, whilst certain targets relating to components of RTD are set, other components of RTD are largely ignored. An analysis of the application of the MDGs to date will be indicative of the extent to which this is the case.

The 2011 Millennium Development Goals Report is useful for assessing the reality behind the MDGs. The Report describes how the international community is achieving its development goals, in the view of the United Nations. It is clear from the report that the United Nations’ assessment of development is very target-focused, and looks specifically at statistics relating to the MDGs; however, the targets are not necessarily focused on the well-being of the developing world as a whole. Meeting Goal 1, eradication of extreme poverty and hunger, by reaching the target of halving the number of people living on less than \$1 a day, is the reported as being met through “sustained growth” in specific regions, notably Asia (Office of Trade Negotiations, 2011). This demonstrates that the international community may meet its targets for Goal 1, without necessarily improving poverty in all areas of the world. For example, improvements in Asia that go above and beyond what is necessary to meet this MDG target may compensate for falling well short of meeting the targets in parts of Africa. Such criticism of the MDGs has also been noted by the likes of Sitta (2001), who argues that the goals can be met either by “improving the general life conditions of all the people” or by “sharply improving the conditions” of half the people.

Indeed, it becomes increasingly apparent from the 2011 Report that the goal of eradicating extreme poverty and hunger may be met by ‘sharply improving the conditions’ of some, rather than ‘progressively improving the life conditions of all’. As a further example, the Report makes much of improvements made in China, where poverty is likely to fall to less than five per cent, and India, where poverty is likely to fall to around 22 per cent, down from 51 per cent in 1990 (Brahimi, 2007, p.5). In terms of how the target is being met in sub-Saharan Africa, however, a prediction that poverty rates will fall to less than 36 per cent is described as being “slightly more upbeat than previously estimated” (Brahimi, 2007, p.7). It is argued that the World Bank still expects poverty rates to fall below 15 per cent by 2015, meaning that this MDG target can still be met (Brahimi, 2007, p.7). Thus, the concern is not with a failure to meet the target in certain region of the world; rather, it is with whether the target can be met more generally and sans a wave of selective progress in one region of the globe and at the expense of another.

This does not mean that there is a deliberate lack of concern with meeting the MDG target throughout the world. Indeed, in relation to many of the other MDG targets, there is at least a greater recognition that sub-Saharan Africa is falling behind. For example, in relation to Goal 4 (reducing child mortality) it is noted that sub-Saharan Africa has the highest levels of under-five mortality, and that the gap between sub-Saharan Africa and other regions is widening (Brahimi, 2007, p.25). Therefore, there exists recognition at least, of a failing to meet obligations in this region. Additionally, the report engages discussion on what can be done to improve the situation—pointing to the prevention of diarrhoea, malaria and pneumonia in sub-Saharan Africa, and post-natal care in Southern Asia.



There is no doubt that if more is done to improve these sectors, child mortality rates in sub-Saharan Africa and Southern Asia will improve. However, it could be argued that the international community is only interested in taking such action in order to meet its MDG targets overall.<sup>10</sup> This can be contrasted to Goal 1, where the overall target is likely to be met without particular attention being paid to sub-Saharan Africa. However, it is worth noting that the report discusses the reasons why there are discrepancies with child mortality rates within countries, suggesting that there is some concern about this issue, even if it is not directly related to meeting the MDG target.

It is not within the scope of this paper to consider each of the MDGs in depth; however it is worth considering the impact of Goal 8, namely, to develop a global partnership for development, as this goal critically reflects the responsibilities of the international community in realizing and fulfilling the right to development. It is interesting to note, for example, how significantly the international community has failed to meet its commitments with regard to international aid. The 2011 report states notes a shortfall of \$18 billion, and attributed just \$1 billion of this shortfall to the economic crisis—the remaining shortfall is recognized as a “failure of donors to meet their commitments” (Brahimi, 2007, p.58).

This then is a poignant example of a case where there has been rhetoric that supports RTD, with much less willingness to support RTD in practice. Moreover, the report looks at whether the international community is improving access to world markets by setting up less-restrictive trade agreements with the developing world (Brahimi, 2007, p.60), whether the debts of the least developed countries are being dealt with appropriately (Brahimi, 2007, p.62), and whether developing countries are being provided access to technology (Brahimi, 2007, p.63). All of these examples place some degree of responsibility on developed countries for helping to achieve RTD in the developing world; however it is arguable that these responsibilities do not go as far as an outright human right to development would—and further there is little action available to take to hold the international community to account when they are not meeting their responsibilities.

Admittedly, whilst the MDGs place some responsibilities on the international community to achieve certain development goals, there is no obligation to support RTD as a whole. In fact, it is possible to meet certain targets overall, without meeting them in large regions: a clear example of rhetoric over reality. Furthermore, the MDGs fall subject to criticisms made by the likes of Sitta, who claims that they focus mainly on outputs, and fail to consider the importance of processes in development (Pouligny, 2005, p.21).

Consequently, Sitta argues that the MDG framework fails to recognize the importance of participation in the development process. Moreover, he argues that the MDGs miss out a number of important components of the overall right to development (Pouligny, 2005, pp.21-22). This is not to say that the MDGs are not improving development in many areas of the world; however it is probably fair to say that they are not engaging people in the same way as a full human right to development would. In this respect, greater effort is required to move the system beyond mere rhetoric.

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<sup>10</sup> Brahimi (2007) is stated that: “the MDG target can be reached, but only with substantial and accelerated action to eliminate the leading killers of children”.



### 2.3.2 The United Nations Economic and Social Council and the Development Cooperation Forum

The consideration of development issues through the United Nations Economic and Social Council (ECOSOC) is another way in which RTD-rhetoric can be assessed against reality. This is done primarily through the Development Cooperation Forum (DCF), which was set up following the 2005 World Summit. The DCF was originally mandated to:

- 1) Review trends in international development cooperation;
- 2) Promote greater coherence among the development activities of different development partners; and
- 3) Strengthen the links between the normative and operational work of the United Nations.<sup>11</sup>

This mandate has since been expanded upon by the United Nations' General Assembly. The DCF is now mandated to:

- 1) Review the trends and progress in international development coordination, and give policy guidance and recommendations to promote more effective international development coordination;
- 2) Identify gaps and obstacles with a view to make recommendations on practical measures and policy options to enhance coherence and effectiveness and to promote development cooperation for the realization of the internationally agreed development goals, including [the MDGs];
- 3) Provide a platform for Member States to exchange lessons learned and share experiences in formulating, supporting and implementing national development strategies; and
- 4) Be open to participation by all stakeholders, including the organizations of the United Nations, the international financial and trade institutions, the regional organizations, civil society and private sector representatives.<sup>12</sup>

The DCF through ECOSOC therefore provides a mechanism that is useful to contrast to the MDGs in terms of how its development rhetoric is engaged against reality. The two mechanisms work in different ways, although there is clearly some degree of overlap: whilst the MDGs have clearly defined targets, there are no such targets to be enforced for the DCF, and the DCF cannot compel the international community to act in a certain manner. However, unlike the MDGs, the DCF's mandate is wider—it has the ability to consider more fully all aspects of the human right to development. As with the MDGs, the best way to consider the DCF is by analyzing its reports. In this case, the most recent report was published in 2010.

A first glance at the 2010 DCF Report reflects that a much wider concept of “development” is being assessed than that of the MDGs alone. For example, the Official Summary of the ECOSOC President addresses issues that include promoting coherence between the various states and organizations that deal with development, increasing aid and ensuring that aid is made use of effectively, the responsibilities of both providers and recipients of aid, and identifying the best practices for going “beyond aid” in terms of meeting the MDGs (Development Cooperation Forum, 2010, pp.4-8).

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<sup>11</sup> 2005 World Summit A/RES/60/1, para.155(b)

<sup>12</sup> General Assembly Resolution A/RES/61/16, para.4.

In looking at how to best make use of aid, and how to provide accountability for all parties contributing to the development process, it is evident that the DCF is doing more than simply assessing how far the international community has come in terms of meeting specific targets—it is looking beyond actors only, by consideration of the processes involved, giving it the potential to do more for the reality of development than the MDGs. However, the MDGs carry the merit of being legally binding, hence unless the DCF is doing more than simply issuing recommendations that are largely ignored, then it too may be considered only to amount to rhetoric.

One of the advantages that the DCF has over the MDG system is that its reports are able to highlight particular policy issues and provide solutions to the difficulties being experienced. For example, the 2010 Report selects ‘allocating resources among competing needs’ as one such issue (Development Cooperation Forum, 2010, p.25). It is noted that the global financial crisis means that international aid is likely to diminish at precisely the time that greater finance is likely to be needed to achieve the MDGs (Development Cooperation Forum, 2010, p.26).

It is suggested that the developed world still needs to meet its commitments and aid to the least developed countries, and most vulnerable groups, needs to be increased most urgently. However it is additionally noted that ‘capacity development’ will enable the recipients of international aid to contribute more to their own development (Development Cooperation Forum, 2010, p.27). Financing gender equality and women’s empowerment is also considered an integral part of RTD as a whole. This demonstrates that the DCF views RTD as a wide all-encompassing human right, in line with that explored in Sengupta’s definition. The implementation of the DCF’s recommendations could therefore be vital for bringing the RTD rhetoric into reality.

Clearly, the DCF does much more than the MDGs in terms of looking at development processes. It is also useful in bringing together the international community to discuss development issues, and to learn from each other. However, it is not clear whether the rhetoric of the DCF is passing over into reality. Just as many of the MDGs are not likely to be met, development as a whole is not progressing as quickly as it could or should. Until there begins to emerge evidence of the DCF making a sustained contribution to development in *practice*, it is best considered to be not more than rhetoric. However, the value of the DCF as a system should not be dismissed outright since it is a useful platform that can be strengthened and expanded upon to contribute towards the full realization of the human right to development.

## **2.4 Moving Beyond the Rhetoric—Making Development a Reality**

The foregoing discussion demonstrates why caution needs to be taken against too great a focus on meeting specified targets since it has led to other aspects of a full human right to development being neglected; however having a system with a considerably broader mandate in relation to RTD will only be effective if it is coupled with enforceability. What is needed then is for practitioners to learn from the mistakes of the current development mechanisms, and to build and improve upon them. Possibilities for translating RTD from rhetoric into reality at national, regional and international levels are considered below.

## **2.4.1 The International Level**

### **2.4.1.1 Creating a Universally Accepted Definition**

The priority for bringing RTD into reality at the international level should be to ensure that a clear and accepted definition of what the human right to development entails is drawn up. States often disagree about what RTD should require or does in fact require, and it will be near impossible to transcend this right into reality until this difficulty is overcome. Sengupta's definition of RTD could be used as a starting point for such an endeavor; however it will be necessary to add greater detail to this general definition so as to secure firmer commitments to RTD.

The aim of practitioners should be to create as full a definition as practicable, without compromising on the feasibility of achieving widespread acceptance by making it too controversial. Ideally, an agreement as to the rights and responsibilities of all members of the international community should be included: there should be an obligation on recipient states to ensure that human rights and development processes are promoted at the national level, and also an obligation on donor states to uphold their aid commitments, and to ensure that their national and international policies do not hinder RTD overall.

Reaching an agreement on an internationally recognized definition of RTD will be no easy task; however, it is important that practitioners persevere in their aim to achieve this. Arguably, even if only a small number of states can be persuaded to sign up to a definition at first, it can always be made possible for other states to sign up at a later date. The existence of an agreement or a framework for an agreement at the very least in itself will place political pressure on other states to embrace consensus, and will in turn propel the issue of RTD higher up the political agenda.

### **2.4.1.2 Improving Current Development Mechanisms**

There is little doubt that the current international development mechanisms need to be improved upon: the MDGs and ECOSOC do not go far enough to move the right to development into reality on their own. The MDGs are not comprehensive enough at present, and are too strictly target-focused; however ECOSOC does not have the ability to impose the level of accountability on states that is needed to enforce a right to development. Therefore, a stronger and more robust system is needed.

As a result of its already wide mandate, one possible solution is to develop the ECOSOC system further, giving it a level of accountability equivalent to that currently given to the MDGs. It becomes paramount, however, that ECOSOC continues to focus on development processes, rather than simply meeting targets: this will ensure that the shortcomings of the MDG system are averted. Targets introduced should be process-based, rather than results based, therefore neutralizing the danger that comes with being able to meet targets with laudable progress in one region, but little progress in another. State reports should focus on whether people living in rural areas have the same access to development as people living in urban areas, and whether the frameworks being put in place are effective.

As with signing states up to a definition of RTD, it will be a challenge to persuade states to make the ECOSOC system stronger and more authoritative. However, even if ECOSOC can only succeed in obtaining greater political influence, this in itself should be regarded as a milestone in the achievement towards the ultimate realization of RTD. If practitioners can highlight the issues brought up by ECOSOC to national governments and international bodies and organizations, this

will increase the influence that ECOSOC's recommendations could exert. In time, such will lead to states following ECOSOC recommendations, even if they have not yet signed up to being legally bound by them.

#### **2.4.2 The Regional Level**

Regional mechanisms have an important role to play in terms of linking international and national action towards achieving a human right to development. As demonstrated in the foregoing discussion, such collaboration will be critical to the successful promotion of development aims. Regional mechanisms can often be more effective than international mechanisms in terms of setting standards, and persuading states to sign up to these standards, because they have a better understanding of the concerns of states within their region and will not be perceived as being colored by a 'Western bias'. The role of regional mechanisms should therefore be to encourage states within their region to promote development, by developing national development policies and programs.

To improve the current situation, regional mechanisms need to explore drawing up of a Charter as a start. That said, it must be remembered that such will not suffice for the evolution of development rhetoric into reality. Following on from a Charter, agreements will need to be carefully crafted, and critical reports into the implementation of RTD need to be conducted on a regular basis. Developing states may be required to introduce principles of equity and good governance nationally; whereas developed states may be required to remove trade restrictions against least-developed countries. In all of the above endeavors, both developed and developing states need to be constantly reminded of the benefits of protecting RTD.

#### **2.4.3 The National Level**

##### **2.4.3.1 Developed States**

Developed states should ensure that their national policies are working to encourage development worldwide, and are not restricting development in any way. Setting out, through their national governments, exactly what actions are going to be taken to meet their commitments is crucial to the enterprise. This could include agreeing on the proportion of indices such as the Gross Domestic Product to be committed to international aid, or legislating to open up trade with developing states. Through transparent declarations of intentions to commit to RTD, developed states could be held to account in the event that fail to meet their obligations.

##### **2.4.3.2 Developing States**

It is important that developing states are seen to take action to implement the RTD nationally: developed nations will be much more willing to offer assistance if they can see that developing nations are also taking responsibility for the realization of RTD. To achieve this, developing nations should draw up national development plans, setting out exactly what action they will take to encourage development nationally. Such plans whilst being ambitious, must not be unrealistic, and should include details on the infrastructure that will be introduced to improve development, rather than consisting of a mere statement of development targets only.

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## CONCLUDING OBSERVATIONS

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Several difficult issues exist within post-conflict societies, and these need to be addressed in order to rebuild nations and secure lasting peace. It is clear that human rights can have an important role to play in this process. Civil and political rights are useful for creating a sense of belonging to the newly rebuilt nation; whereas economic, social and cultural rights are valuable for creating opportunities both for individuals within post conflict societies, and for the societies as a whole. When the two groups of human rights are protected in tandem, it is possible to create a stable and secure nation, in which civil unrest is unlikely to emerge or return.

Possibly the most important contribution human rights can make to securing lasting peace is the protection they bring to minorities. This is done both through enabling minorities to use their civil and political rights to influence public policy, and also through ensuring that even the most marginalized groups are able to access provisions needed to meet their basic needs, such as basic healthcare for example.

As discussed, the ways in which minority rights are best protected will vary depending on the specific situations of the post-conflict nations in question; however it is clear that without minority rights protection, civil unrest is likely to return. Practitioners are therefore well advised to work closely with minority groups in order to determine how their needs can be best met. It should be borne in mind, however, that an overly minority-focused approach could arouse the suspicions of the majority. Ultimately, balance and discretion need to be used to suit the exigencies and circumstances of the particular situation at hand, ensuring that the social fabric woven in the newly rebuilt nation leaves no place for discrimination, discontent or misgiving.

Although there are some positive aspects to current development mechanisms, a great deal more is needed to translate RTD from rhetoric into reality. Possible improvements to current systems have been considered in the foregoing discussion; however they are only *possible* improvements - other possibilities need to be explored and developed. Such approaches need to inform the work of development practitioners, at the national and international levels, across both developed and developing states alike, so as to make the necessary improvements in the current existing structure of development mechanisms. This will contribute significantly towards the ultimate realization of a full and enforceable human right to development which will in turn lead to the increased quality and standard of life and living for people in every region of the world.

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